

1 Robert W. Unikel (IL Bar #6216974)
2 (*pro hac vice*)
3 robertunikel@paulhastings.com
4 PAUL HASTINGS LLP
5 71 South Wacker Dr., 45th Floor
6 Chicago, IL 60606
7 Telephone: (312) 499-6000
8 Facsimile: (312) 499-6100

9 Elizabeth L. Brann (CA Bar #222873)
10 elizabethbrann@paulhastings.com
11 PAUL HASTINGS LLP
12 4747 Executive Drive, 12th Floor
13 San Diego, CA 92121
14 Telephone: (858) 458-3000
15 Facsimile: (858) 458-3005

16 [ADDITIONAL COUNSEL LISTED ON
17 SIGNATURE PAGE]

18 Attorneys for Defendant Google LLC

19
20 UNITED STATES DISTRICT COURT
21
22 SOUTHERN DISTRICT OF CALIFORNIA
23
24 SAN DIEGO DIVISION

25 VEDANTI LICENSING LIMITED,
26 LLC,

27 Plaintiff,

28 vs.

GOOGLE LLC,

Defendant.

CASE NO. 3:20-CV-01344-BEN-WVG

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANT'S MOTION TO
DISMISS PURSUANT TO FED. R.
CIV. P. 12(B)(6) AND MOTION TO
STRIKE PURSUANT TO FED. R.
CIV. P. 12(F)**

Date: November 16, 2020
Time: 10:30 a.m.
Judge: Hon. Roger T. Benitez
Courtroom 5A

29

30

31

32

33

34

35 NO. 3:20-CV-01344-BEN-WVG

1 Defendant Google LLC (“Google”) respectfully requests that the Court
 2 consider certain documents identified below in connection with Google’s Motion to
 3 Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and Motion to Strike Pursuant to Fed.
 4 R. Civ. P. 12(f) (“Motion”) because: (1) the Court may take judicial notice of the
 5 following documents and certain terms contained therein pursuant to Federal Rule
 6 of Evidence 201 and related authority; and (2) certain documents were referenced
 7 or relied upon in the First Amended Complaint (Dkt. 20) (“FAC”) as identified
 8 below. These documents are attached as Exhibits to the Declaration of Robert W.
 9 Unikel in Support of Defendant’s Motion (“Unikel Declaration”).

10 Exhibit	11 Description	12 Basis
13 Ex. A	14 U.S. Patent Office’s record of 15 assignment history for U.S. Patent No. 16 7,974,339 (“the ’339 Patent”)	17 FRE 201 and because 18 referenced or relied upon 19 in FAC
20 Ex. B	21 LLC Registration for Vedanti 22 Licensing Limited LLC from the 23 California Secretary of State	24 FRE 201
25 Ex. C	26 IPR2016-00212, Final Written 27 Decision (May 17, 2017)	28 FRE 201 and because 29 referenced or relied upon 30 in FAC
31 Ex. F	32 IPR2016-00212, Patent Owner Vedanti 33 Systems Limited’s Mandatory Notices 34 (Dec. 9, 2015)	35 FRE 201
36 Ex. G	37 IPR2016-00212, Patent Owner’s 38 Updated Mandatory Notice (Aug. 11, 39 2016)	40 FRE 201
41 Ex. H	42 IPR2016-00212, Patent Owner’s Third 43 Updated Mandatory Notice (Jan. 12, 44 2017)	45 FRE 201
46 Ex. J	47 Assignment of U.S. Patent No. 48 7,974,339 to Vedanti Licensing 49 Limited (UK) (Sep. 29, 2016)	50 FRE 201 and because 51 referenced or relied upon 52 in FAC
53 Ex. K	54 Assignment of U.S. Patent No. 55 7,974,339 to Vedanti Licensing 56 Limited LLC (June 30, 2020)	57 FRE 201 and because 58 referenced or relied upon 59 in FAC

1 Federal Rule of Evidence 201 authorizes this Court to take judicial notice of
 2 facts “not subject to reasonable dispute” that “can be accurately and readily
 3 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.
 4 Evid. 201(b). The Rule mandates that judicial notice be taken “if a party requests it
 5 and the court is supplied with the necessary information,” *id.* at 201(c), and
 6 authorizes judicial notice “at any stage of the proceeding,” *id.* at 201(d). *See Mir v.*
 7 *Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988) (“In addition to the
 8 complaint, it is proper for the district court to ‘take judicial notice of matters of
 9 public record outside the pleadings’ and consider them for purposes of the motion
 10 to dismiss.”) (citation omitted).

11 It is well settled that records and reports from government agencies are the
 12 proper subject of judicial notice. *See, e.g., Barron v. Reich*, 13 F.3d 1370, 1377 (9th
 13 Cir. 1994) (judicial notice may be taken of “[r]ecords and reports of administrative
 14 bodies”); *Cota v. Maxwell-Jolly*, 688 F. Supp. 2d 980, 998 (N.D. Cal. 2010) (“The
 15 Court may properly take judicial notice of the documents appearing on a
 16 governmental website.”).

17 Specifically, it is appropriate to take judicial notice of the PTAB’s Final
 18 Written Decision (Ex. C) and other PTAB filings (Exs. F–H). *See Papai v. Harbor*
 19 *Tug & Barge Co.*, 67 F.3d 203, 207 n.5 (9th Cir. 1995), *rev’d on other grounds*,
 20 520 U.S. 548 (1997) (“Judicial notice is properly taken of orders and decisions
 21 made by other courts or administrative agencies.”); *PersonalWeb Techs. LLC v.*
 22 *Google LLC*, No. 5:13-cv-01317-EJD, 2020 WL 520618, at *6 n.4 (N.D. Cal. Jan.
 23 31, 2020) (“The IPR materials cited by Defendants and Plaintiff are subject to
 24 judicial notice.”) (*appeal filed*).

25 The ’339 Patent’s assignment history (Exs. A, J, K), as reflected by the PTO
 26 records, is also eligible for judicial notice. “Because the USPTO documents are
 27 public records ‘capable of accurate and ready determination by resort to sources
 28 whose accuracy cannot be questioned,’ judicial notice is proper.” *Seoul Laser*

1 *Dieboard Sys. Co. v. Serviform, S.r.l.*, 957 F. Supp. 2d 1189, 1194 n. 2 (S.D. Cal.
 2 2013); *Certified Nutraceuticals, Inc. v. Avicenna Nutraceutical, LLC*, No. 3:16-cv-
 3 02810, 2018 WL 4385368, at *1 (S.D. Cal. Sept. 14, 2018) (“The Court takes
 4 judicial notice of the ’319 Patent’s assignment history, which is publicly available
 5 on the United States Patent and Trademarks Office’s (‘USPTO’s) website”).

6 Further, the Court may properly take judicial notice of the LLC Registration
 7 for Vedanti Licensing Limited LLC from the California Secretary of State (Ex. B).
 8 Courts in this district routinely do so. *See, e.g., Kearny Mesa Real Estate Holdings,
 9 LLC v. KTA Constr., Inc.*, No. 17-cv-207, 2017 WL 3537753, at *3 (S.D. Cal. Aug.
 10 16, 2017) (taking judicial notice of a Certificate of Registration issued by the
 11 California Secretary of State); *Phillips v. Wells Fargo Bank, N.A.*, No. 09-cv-1486,
 12 2009 WL 3756698, at *3 (S.D. Cal. Nov. 6, 2009) (taking judicial notice of a copy
 13 of the California Secretary of State’s office records regarding the status of a foreign
 14 limited liability company as an active and registered foreign entity).

15 The Court may also take judicial notice of the USPTO assignment records
 16 and the Final Written Decision of the PTAB because “they are integral to the
 17 plaintiff’s claims and their authenticity is not disputed.” *simplehuman, LLC v.
 18 iTouchless Housewares & Prods., Inc.*, No. 19-cv-02701, 2019 WL 5963245, at *2
 19 (N.D. Cal. Nov. 13, 2019) (*citing Parrino v. FHP, Inc.*, 146 F.3d 699, 705–06 (9th
 20 Cir. 1998), *superseded by statute on other grounds as stated in Abrego Abrego v.
 21 The Dow Chem. Co.*, 443 F.3d 676, 681 (9th Cir. 2006)). Although the USPTO
 22 assignment records (Exs. A, J, K) are not attached to Plaintiff’s FAC, the FAC
 23 bases its alleged standing to bring this action on Plaintiff’s claim that it “is the
 24 owner by assignment of all rights, title, and interests in the ‘339 Patent and the
 25 Vedanti Source Code and is entitled to sue for past and future infringement
 26 thereof.” Dkt. 20, ¶ 22. Thus, the assignment records are an integral part of
 27 Plaintiff’s claims. The Final Written Decision (Ex. C) is referenced in the FAC and
 28 is integral to Vedanti’s claims (*i.e.*, which patent claims Vedanti is eligible to

1 assert). In its FAC, Vedanti states “the PTAB determined on May 17, 2017 that
2 claims 1, 6, 7, 9, 10, 12, and 13 of the ’339 Patent were unpatentable under 35
3 U.S.C. 103 over the combination of the Spriggs and Golin references . . . the
4 remaining claims of the ’339 Patent—claims 2, 3, 4, 5, 8, and 11—are still valid
5 and enforceable today.” Dkt. 20, ¶¶ 34–35. The Court may properly take judicial
6 notice of these records because they are officially published on and publicly
7 accessible on the USPTO website. Thus, they are ascertainable, verifiable, and their
8 accuracy cannot be reasonably questioned. Fed. R. Evid. 201(b)(2).

9 Therefore, Google requests that the Court take judicial notice of Exhibits A–
10 C, F–H, and J–K of the Unikel Declaration.

11 DATED: October 13, 2020 Respectfully submitted,
12 By: */s/ Robert W. Unikel*

14 Robert W. Unikel (IL Bar #6216974)
(*pro hac vice*)
15 robertunikel@paulhastings.com
16 **PAUL HASTINGS LLP**
17 71 South Wacker Dr., 45th Floor
Chicago, IL 60606
Telephone: (312) 499-6000
Facsimile: (312) 499-6100

23 Robert Laurenzi (NY Bar #3024676)
24 (*pro hac vice*)
25 robertlaurenzi@paulhastings.com
26 **PAUL HASTINGS LLP**
27 200 Park Avenue, 26th Floor
New York, NY 10166
Telephone: (212) 318-6000
Facsimile: (212) 318-6100

28 Tad Richman (CA Bar #268091)
tadrichman@paulhastings.com

PAUL HASTINGS LLP
2050 M Street NW,
Washington, D.C. 20036
Telephone: (202) 551-1700
Facsimile: (202) 551-1705

Attorneys for Defendant Google LLC